

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARREN McLEHAN,

Plaintiff,

v.

CHASE HOME FINANCE, LLC,

Defendant.

No. 09-11547

District Judge David M. Lawson

Magistrate Judge R. Steven Whalen

ORDER DENYING MOTION TO AMEND COMPLAINT

Before the Court is Plaintiffs' Motion for Leave to File Third Amended Complaint [Docket #20]. Plaintiffs seek to add Deutsch Bank National Trust as a Defendant, to supplement existing claims against Defendant Trott & Trott and Chase Home Finance, and to add claims for equitable relief to set aside Sheriff's Deed (Count IV), for fraud against Defendant Wayne County (Counts V and VI), and unnumbered counts of "action to quiet title" and "slander of title."

Fed.R.Civ.P. 15(a) states that after a responsive pleading is filed, a complaint may be amended only by leave of the court, and that "leave shall be freely given when justice so requires." Motions to amend are addressed to the Court's discretion, and in deciding whether to allow an amendment, "the court should consider the delay in filing, the lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment." *Perkins v. American Electric Power Fuel Supply, Inc.*, 246 F.3d 593, 605 (6th Cir. 2001). Despite the general rule of liberality with which leave to file amended complaints is to be granted, the Sixth Circuit has held that when a proposed

amended complaint would not survive a motion to dismiss, the court may properly deny the amendment. *Neighborhood Development Corp. v. Advisory Council on Historic Preservation*, 632 F.2d 21, 23 (6th Cir. 1980); *Thiokol Corporation v. Department of Treasury*, 987 F.2d 376 (6th Cir. 1993).

In this case, the Plaintiffs' proposed amended complaint [Docket #21] would be futile. I have filed Reports and Recommendations ("R&Rs") to dismiss Defendants Wayne County, Federal Home Loan Mortgage Corp., and Chase Bank. As explained in the R&Rs, Wayne County enjoys governmental immunity. Claims under the Truth in Lending Act ("TILA") are time barred. There is no private cause of action under the Federal Trade Commission Act ("FTCA"). I also found that Plaintiffs lack standing to challenge the foreclosure process, and rejected "unjust enrichment" claims. The reasoning set forth in my R&Rs apply to the proposed amended complaint.¹

If my R&Rs are adopted, the only Defendant remaining would be Trott & Trott. The Plaintiffs' proposed amended complaint does not contain any new or viable claims against Trott & Trott, and at most merely expands (unnecessarily, for pleading purposes) on existing claims.

Therefore, Plaintiffs' motion to amend [Docket #20] is DENIED.

IT IS SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: July 2, 2010

¹ The Plaintiffs' proposed claims to quiet title and for slander of title are premised on alleged TILA and FTCA violations.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on July 2, 2010.

S/G. Wilson
Judicial Assistant